

## This Week in Derivatives

September 27, 2024

**From the Derivatives Practice Group:** This week, the CFTC requested public comment on a rule certification filing and extended two no-action letters in connection with reporting obligations.

### New Developments

- **CFTC Requests Public Comment on a Rule Certification Filing by KalshiEX LLC.** On September 26, the CFTC requested public comment on a [rule certification filing](#) by KalshiEX LLC, which would amend its rulebook to include rules for a request for quote functionality and amendments to its prohibited transactions rule. The CFTC previously [stayed](#) KalshiEX LLC's filing because, according to the CFTC, the submission presents novel or complex issues that require additional time to analyze and is potentially inconsistent with the Commodity Exchange Act or the CFTC's regulations. Comments must be submitted on or before Oct. 28, 2024. [NEW]
- **CFTC Staff Extends No-Action Position for Certain Reporting Obligations Under the Ownership and Control Reports Final Rule.** On September 25, the CFTC's Division of Market Oversight ("DMO") issued a no-action letter that extends the current no-action position for reporting obligations under the [ownership and control reports final rule](#) ("OCR Final Rule"). The OCR Final Rule, approved in 2013, requires the electronic submission of trader identification and market participant data for special accounts and volume threshold accounts through Form 102 and Form 40. DMO said that it is extending its no-action position to address continuing compliance difficulties associated with certain ownership and control reporting obligations identified by reporting parties and market participants. The position extends DMO's position under CFTC Letter No. [23-14](#), stating that DMO will not recommend the CFTC commence an enforcement action for non-compliance with certain obligations. These obligations include, among others, the timing

of ownership and control report form filings; certain information required to be reported regarding trading account controllers and volume threshold account controllers on Form 102; the reporting threshold that triggers the reporting of a volume threshold account on Form 102; the filing of refresh updates for Form 102; and responses to certain questions on Form 40. The no-action position will remain in effect until the later of the applicable effective date or compliance date of a CFTC action, such as a rulemaking or order, addressing such obligations. [NEW]

- **CFTC Announces Four Orders Granting Whistleblower Awards – Marking the Most in a Single Day.** On September 23, the CFTC announced awards totaling approximately \$4.5 million for whistleblowers who, collectively, provided information that led to the success of multiple enforcement actions brought by the CFTC and another authority. The four orders granting awards, to a total of seven whistleblowers, are the most the CFTC has issued on a single day. [NEW]
- **CFTC Staff Extends Temporary No-Action Letter Regarding Capital and Financial Reporting for Certain Non-U.S. Nonbank Swap Dealers Domiciled in the EU and the UK.** On September 20, the CFTC’s Market Participants Division (“MPD”) announced it issued a temporary no-action letter extending CFTC Staff Letters No. [21-20](#) and [22-10](#) to certain nonbank swap dealers (SDs) domiciled in the European Union (“EU”) and the United Kingdom (“UK”) that are the subject of pending CFTC reviews for comparability determinations regarding capital and financial reporting requirements. As part of the capital and financial reporting requirements for nonbank SDs, the CFTC adopted a substituted compliance framework that permits certain nonbank SDs to rely on compliance with home-country capital and financial reporting requirements in lieu of meeting all or parts of the CFTC’s capital adequacy and financial reporting requirements, provided the CFTC finds the home-country requirements comparable to the CFTC’s requirements. Through CFTC Staff Letter No. [24-13](#), issued on September 20, MPD is extending a no-action position to eligible nonbank SDs domiciled in the EU and the UK that are not covered by existing CFTC orders addressing capital and financial reporting requirements. The no-action position is conditioned upon the nonbank SDs remaining in compliance with applicable home-country capital and financial reporting requirements and submitting certain financial reporting information to the CFTC. The no-action position will expire by December 31, 2026 or the effective date of any final CFTC action addressing the comparability of capital and financial reporting requirements applicable to the relevant nonbank SDs. [NEW]
- **CFTC Approves Final Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts.** On September 20, the CFTC approved final guidance regarding the listing for trading of voluntary carbon credit derivative contracts. The guidance applies to designated contract markets (“DCMs”), which are CFTC-regulated derivatives exchanges, and outlines factors for DCMs to consider when addressing certain Core Principle requirements in the Commodity Exchange Act (“CEA”) and CFTC regulations that are relevant to the listing for trading of voluntary carbon credit derivative contracts. The guidance also outlines factors for consideration when addressing certain requirements under the CFTC’s Part 40 Regulations that relate to the submission of new derivative contracts, and contract amendments to the CFTC.

- CFTC Approves Part 40 Final Rule to Simplify and Enhance Rule and Product Submission Processes.** On September 12, the CFTC approved a final rule to amend Part 40 of the CFTC's regulations. The regulations in Part 40 implement Section 5c(c) of the CEA and govern how registered entities submit self-certifications, and requests for approval, of their rules, rule amendments, and new products for trading and clearing, as well as the CFTC's review and processing of such submissions. The amendments are intended to clarify, simplify and enhance the utility of the Part 40 regulations for registered entities, market participants and the CFTC. The final rule is effective 30 days after publication in the Federal Register.
- DC Circuit Court Orders Temporary Stay Suspending Trading on Election Contracts.** On September 12, the United States Court of Appeals for the District of Columbia Circuit (the "DC Circuit Court") ordered a [temporary stay](#) suspending trading on election contracts offered by KalshiEx LLC ("KalshiEx") "to give the court sufficient opportunity to consider the emergency motion for stay pending appeal." Prior to the temporary stay from the DC Circuit Court, the United States District Court for the District of Columbia (the "DC District Court") [overturned an order](#) blocking KalshiEx from allowing election contract trading on its platform and denied the CFTC's request for a stay pending appeal. KalshiEx filed a [response](#) to the CFTC's emergency motion on September 12 and the CFTC's reply is due to the DC Circuit Court by 6:00 pm on September 14.
- CFTC Approves Final Rule Regarding Exemptions from Certain Compliance Requirements for Commodity Pool Operators, Commodity Trading Advisors, and Commodity Pools.** On September 12, the CFTC published a final rule that amends CFTC [Regulation 4.7](#), a provision that provides exemptions from certain compliance requirements for commodity pool operators ("CPOs") regarding commodity pool offerings to qualified eligible persons ("QEPs") and for commodity trading advisors ("CTAs") regarding trading programs advising QEPs. The final rule amends various provisions of the regulation that have not been updated since the rule's original adoption in 1992. Specifically, the final rule: (1) increases the monetary thresholds outlined in the "Portfolio Requirement" definition that certain persons may use to qualify as Qualified Eligible Persons; (2) codifies exemptive letters allowing CPOs of Funds of Funds operated under Regulation 4.7 to choose to distribute monthly account statements within 45 days of the month-end; (3) includes technical amendments designed to improve its efficiency and usefulness for intermediaries and their prospective and actual QEP pool participants and advisory clients, as well as the general public; and, (4) updates citations within 17 CFR Part 4, and throughout the CFTC's rulebook, to reflect the new structure of Regulation 4.7.

## New Developments Outside the U.S.

- SFC and HKMA Publish Conclusions on Enhancements to OTC Derivatives Reporting Regime for Hong Kong.** On September 26, the Securities and Futures Commission and the Hong Kong Monetary Authority jointly published [conclusions](#) on proposed enhancements to the over-the-counter ("OTC") derivatives reporting regime for

Hong Kong, indicating that they will mandate (i) the use of unique transaction identifiers, (ii) the use of unique product identifiers and (iii) the reporting of critical data elements beginning on September 29, 2025. [NEW]

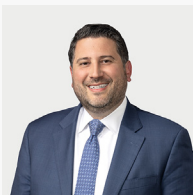
- **ESAs Warn of Risks From Economic and Geopolitical Events.** On September 10, the three European Supervisory Authorities (“ESAs”) issued their [Autumn 2024 Joint Committee Report on risks and vulnerabilities in the EU financial system](#). In the report, the ESAs underlined ongoing high economic and geopolitical uncertainties, warned of the financial stability risks that they believe stem from these uncertainties and called for continued vigilance from all financial market participants. For the first time, the report also includes a cross-sectoral deep dive into credit risks in the financial sector.
- **EC Publishes Draghi Report on the Future of European Competitiveness.** On September 9, the European Commission (“EC”) published a report, Future of European Competitiveness, authored by former Italian prime minister and head of the European Central Bank Mario Draghi. The report, which was commissioned by EC president Ursula von der Leyen, outlines the EU’s new industrial strategy. [Part A](#) of the report outlines the overarching strategy, while [Part B](#) discusses sectoral and horizontal policies and related recommendations in more detail. The report covers topics that include energy derivatives, sustainable finance, EU supervision, Basel framework, and collateral. The EC president indicated that she will aim to form a cabinet, with related mission letters that she expects to cover certain aspects of the report as part of future EU policies.

## New Industry-Led Developments

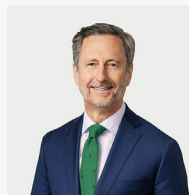
- **ISDA Publishes Updated Best Practices for Confirming Reference Obligations or Standard Reference Obligations.** On September 25, ISDA published updated [Best Practices for Single-name Credit Default Swaps regarding Reference Obligations or Standard Reference Obligations](#). The document sets out suggested best practices for confirming the Reference Obligation or Standard Reference Obligations for single-name Credit Default Swaps and is an update to the [Best Practice Statement](#) that was published by ISDA on November 18, 2014. [NEW]
- **Joint Trade Association Issues Statement on EMIR 3.0 Effective Implementation Dates.** On September 23, ISDA, the Alternative Investment Management Association, the European Banking Federation, the European Fund and Asset Management Association and FIA sent a [letter](#) urging the European Commission and European supervisory authorities to clarify that market participants are not required to implement the European Market Infrastructure Regulation (“EMIR 3.0”) Level 1 provisions prior to the date of application of the associated Level 2 regulatory technical standards (“RTS”). In the letter, the associations state that they are seeking clarification to avoid firms being required to implement the requirements of EMIR 3.0 twice—first, to comply with the Level 1 provisions once EMIR 3.0 enters into force and then when the associated Level 2 RTS becomes applicable. [NEW]

- **ISDA Publishes Standing Settlement Instructions Suggested Operational Practices.** On September 20, ISDA published the [ISDA Standing Settlement Instructions \(“SSI”\) suggested operational practices \(“SOP”\)](#), which outlines a set of guidelines for the communication, management and usage of SSIs. According to ISDA, the document aims at increasing standardization and efficiency in performing payments for over-the-counter (“OTC”) derivatives and it is an update to the [Best Practice Statement](#) that was published by ISDA on August 11, 2010. SOPs for the exchange of SSIs for the purposes of collateral are available in section 1.7 of the [Suggested Operational Practices for the OTC Derivatives Collateral Process](#). [NEW]
- **ISDA Publishes Results of DC Review Consultation.** On September 19, ISDA published the results of a [market-wide consultation](#) on proposed changes to the structure and governance of the Credit Derivatives Determinations Committees (“DCs”). ISDA reported that the consultation indicated broad market support to implement many of the recommendations, including establishing a separate governance body, implementing certain transparency proposals relating to the publication of DC decisions and appointing up to three independent members of the DCs. Some of the proposals received a significant minority of objections.
- **ISDA Submits Letter to US Treasury Department on Listed Transactions.** On September 11, ISDA [submitted a letter](#) in response to the US Department of the Treasury’s proposal to identify certain basket contract transactions as listed transactions. In the letter, ISDA argued that ISDA believes the proposed regulations would apply to many non-abusive transactions, would inappropriately take the place of substantive guidance and would generate compliance burdens and uncertainty for taxpayers.

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